

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2585 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MADHAVJI BIJAL RANVA

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR KB PADIA for the Petitioner

MR NIGAM SHUKLA for the Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

1. It is not in dispute that the land which has been allotted to the petitioner being an ex-service man as well as Harijan by caste, a weaker section of the society, has been put to auction for recovery of the loan taken by the petitioner from the bank and in auction this land has been purchased by the State Government itself. After making the said auction of land, the expenses of conducting the same and other recovery against the petitioner of the land revenue etc. as well as the

amount of loan of the bank, Rs.5055-25 have been paid to the petitioner as the balance of the sale proceedings. The Deputy Collector, Gondal has taken this matter in the revision may be suo motu and confirmed the auction sale, but it has been ordered that due to the breach of the conditions of allotment, the land in question should be forfeited and the amount of Rs.5055-25 as paid to the petitioner be recovered from him. The petitioner against the aforesaid order of the Dy. Collector, Gondal preferred an appeal to the Collector, Rajkot which has been dismissed on 24th February, 1982. The petitioner has taken this matter further in revision before the State Government, but that too has been dismissed. Hence, this Special Civil Application.

2. The learned counsel for the petitioner made two fold submissions. Firstly, it is contended that the land has been auctioned and from the sale proceedings thereof the loan amount has been paid and other dues of the land have also been recovered and the balance amount has been paid to the petitioner, and so there was no justification whatsoever with the revision authority to cancel the allotment for breach of the condition thereof. In case of the cancellation of allotment for breach of condition of allotment, the principles of natural justice have not been followed before making any order of forfeiture. The counsel for the petitioner further contended that if the administrative order results into civil consequences, then the principles of natural justice are to be complied with. He further contended that before passing any order adversely affecting any of the right, title or interest as well as causing some monetary loss or forfeiture of some right, the affected person should be given notice and an opportunity of hearing, which has not been done in the present case. Lastly, the learned counsel for the petitioner contended that the breach of condition of the allotment is that the petitioner has not put the land in cultivation for the last three years. The counsel for the petitioner contended that in the facts and circumstances of the present case, where the land has been auctioned by the respondent, and Government has purchased the same, and at the most it is the case of technical breach of the conditions of allotment, such a prejudicial order should not have been made, more so where the land has been given to an ex-service man, a Harijan by caste.

3. On the other hand, the learned counsel for the respondent contended that it is a case of breach of conditions of allotment for which the principles of natural justice need not be followed. It has next been

contended that the breach of the conditions have not been denied, and as such, merely on the ground of violation of principles of natural justice this Court should not interfere in the matter. However, learned counsel for the respondent does not dispute that this action of forfeiture of the allotment and the recovery of the amount has been made only after the land in question has been auctioned and the same has been purchased by the Government.

4. I have given my thoughtful consideration to the learned counsel for the parties. I do not find any substance in the contentions of the learned counsel for the respondent that in the present case, the principles of natural justice were not required to be followed. The order which has been made by the Dy. Collector in the present case result in the consequences of (i) the cancellation/forfeiture of the allotment and (ii) the recovery of amount of Rs.5055-25. So far as the cancellation of the allotment is concerned, in view of the fact that the land has already been put into auction, there may not be any serious question but the recovery of the amount of Rs.5055-25 is certainly the civil consequence which has resulted from the impugned order. The petitioner has to return a substantial amount and the result of such order is prejudicial to his interest. In such cases, where the order has a civil consequence or otherwise causes some prejudice to the person concerned, though it may be an administrative order, but before passing of the same, a notice and an opportunity of hearing is to be afforded which is admittedly not been done in the present case. Though the proceedings initiated against the petitioner and the consequential order made deserves to be set aside only on this ground, but as other points have been raised, I consider it appropriate to go on merits also.

5. The breach of the condition of the allotment is not of such a nature which warrants such a prejudicial order after the land in question has been sold in auction and purchased by the Government itself. Any action after completion of the sale etc. normally should not have been taken in suo motu revision. Moreover, while considering this matter the respondents have ignored the fact that it was an allotment to an ex-service man, and a person, Harijan by caste also. Such a strict view should not have been taken in the facts and circumstances of the present case.

6. Taking into consideration the totality of the facts of this case, this writ petition deserves to be

accepted and the same is allowed. So far as the forfeiture of the allotment is concerned, it is maintained as the land in question has already been sold. However, the order to the extent of recovery of Rs.5055-25 from the petitioner made by the respondent is quashed and set aside.

7. No other point has been argued and no other prayer has been pressed. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-